

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

STEPHANIE SHARP

PLAINTIFF

VS.

CASE NO. 2:07CV00090 JMM

ROBERT WILSON, ET AL.

DEFENDANT

ORDER

Pending before the Court are the defendants' Motions for Summary Judgment and plaintiff's responses. Plaintiff filed her complaint rasing state causes of action in Crittenden County Circuit Court on June 19, 2006. The case was removed to federal court by defendant Ellis on June 29, 2007.

The record reflects that defendants Carter and Ellis are citizens of Arkansas and defendant Wilson is a citizen of Florida. The plaintiff has not been a citizen of Arkansas since 2005.

The federal removal statute, 28 U.S.C. § 1441, provides that a diversity action is removable if the requirements for diversity jurisdiction are met and "if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). Violation of the forum defendant rule is a jurisdictional defect and cannot be waived. *See Horton v. Conklin*, 431 F.3d 602 (8th Cir. 2005). Because two of the defendants are citizens of Arkansas, removal under 28 U.S.C. § 1441 was not proper and this Court does not have jurisdiction over the case.

The Clerk of the Court is directed to remand the case with the pending motions back to the Circuit Court of Crittenden County, forthwith.

IT IS SO ORDERED THIS 23 day of April, 2008.

James M. Moody
United States District Judge